Opinion of the United States Court of Appeals for the Third Circuit

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 16454

DAVID W. BROWN, PRIVATE E-2 RA 11 797 464,
Appellant,

v.

HON. ROBERT S. McNAMARA, SECRETARY OF DEFENSE;
HON. STANLEY R. RESOR, SECRETARY OF THE ARMY;
MAJOR GENERAL JOHN M. HIGHTOWER,
COMMANDING GENERAL, U. S. ARMY TRAINING CENTER,
INFANTRY, U. S. ARMY, FORT DIX, NEW JERSEY,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Argued October 5, 1967

Before STALEY, *Chief Judge,* and MARIS and VAN DUSEN,
Circuit Judges

OPINION OF THE COURT

(Filed November 24, 1967)

By VAN DUSEN, *Circuit Judge*

This appeal concerns the jurisdiction of the Federal Courts over persons in the military service.[1] The case is before the court on appeal from an order of the District Court denying a petition for a writ of habeas corpus, requesting the discharge of appellant from the Army on the grounds of his being a conscientious objector. Appellant

1 The background of this case is set out in considerable detail in the able opinion of Judge Lane: *Brown v. McNamara,* 268 F. Supp. 686 (D. N. J. 1967).

(Private David W. Brown) voluntarily enlisted in the Army. The petition alleges that his religious beliefs "crystalized" two weeks after beginning his basic training at Fort Dix, New Jersey, and he refused to proceed further with combat training.

Army Regulations (AR 635-20) provided a procedure for people in Private Brown's position to request discharge from the Army on the grounds of conscientious objection. Private Brown submitted the required forms, together with the required documentation, and complied fully with the procedure, including the Chaplain's and psychiatrist's reports. This internal Army regulation was adopted pursuant to a Defense Department directive designed to establish uniform procedures in all branches of the Armed Services for considering discharge requests on the grounds of conscientious objection (DOD No. 1300.6). The administrative system contemplated by the Defense Department and enacted by the Army regulation is fairly detailed. But in general terms it provides for a "discretionary" discharge, consistent with the national policy of not inducting conscientious objectors. Since members of the Armed Forces are involved, however, such discharge requests will be recognized only "to the extent practicable and equitable." Certain guidelines and rules are given for exercising this discretion, including: the claimed objection cannot stem from beliefs existing before entering the Armed Forces; each service's headquarters will decide, after consideration of the peculiar circumstances of the case; great care should be used to insure the sincerity of the claim; the same standards used by the Selective Service System for pre-induction claims should be used (an advisory I-O classification from the Selective Service will be a normal prerequisite for discharge, particularly where the applicant has less than two years of service); and no absolute objective measurements can be applied across the board. The procedure suggested allows for assignment to non-combatant duties in certain cases and the Army regulations provide

for assignment to duties providing the minimum conflict with professed religious beliefs pending final decision on an application for discharge.

Private Brown's application did not receive a favorable advisory classification of I-O (or I-A-O allowing a non-combatant assignment) from the Director of Selective Service, despite several letters submitted on his behalf from outside sources attesting to his religious convictions. Both the Chaplain's report and the Commanding Officer's recommendation of disapproval made reference to Brown's contact with pacifist organizations and persons, and both concluded that his beliefs were based upon these contacts, as opposed to religious convictions. Based on this recommendation, the documents attached to the application, and the Selective Service opinion, the Adjutant General denied discharge and, accordingly, Private Brown was ordered to draw combat training equipment. Brown refused. After hearing by a Special Court Martial and suspension of his sentence by the reviewing officer, a second refusal to obey orders led to new charges. Instead of convening a second court martial, suspension of the original sentence of three months' confinement at hard labor was vacated and Brown was ordered into confinement.[2] The petition for a writ of habeas corpus followed, alleging that Brown was being held in violation of his rights. In general terms, appellant alleged that the Army violated its own procedure, made an incorrect determination of Brown's conscientious objector status, and followed an administrative procedure that denied Brown constitutionally required procedural and substantive due process, as well as equal protection of law.

The lower court denied any relief by way of habeas corpus, finding no constitutional infirmity in the adminis-

2 At oral argument, counsel for appellant indicated that Private Brown again refused to obey orders after his three-month sentence and thus incurred another court-martial sentence, 18 months at hard labor, to be served at Fort Leavenworth, Kansas. No good reason has been shown why transfer of petitioner-appellant Brown from Fort Dix should be restrained, as orally requested by his counsel at argument. It is noted that no written motion for such extra relief has been presented.

trative procedure used by the Army and no jurisdiction to review their factual determination under that procedure. We agree with the excellent opinion of Judge Lane on the issue of procedural due process.[3] Regardless of the constitutional underpinnings of the right to classification as a conscientious objector, it is perfectly rational and consonant with constitutional concerns, including the separation of powers, to regard voluntarily enlisted servicemen as a distinct class from inducted civilians or servicemen in general discharged to civilian life. We therefore affirm the conclusion "that the administrative scheme set up by the Department of Defense and the Army does not of itself result in any constitutional violation." See *Brown v. McNamara, supra*, at 691.

Inherent in this conclusion and our approval is a decision that the Federal Courts have jurisdiction to make this review of procedural due process just as they would if the question were one of statutory construction. E. g., *Harmon v. Brucker*, 355 U. S. 579, 581-2 (1958).

We do not decide, however, that as a general proposition the Federal Courts lack jurisdiction to review the substantive elements of this military procedure for discharging conscientious objectors. More specifically, we do not hold that a Federal Court has no jurisdiction, no matter how arbitrary military action might be, to grant habeas corpus relief to an enlisted member of the Armed Forces who applies for discharge as a conscientious objector after commencing his active service. With this view of our jurisdiction, we reject the appellant's petition on the basis of our examination of this particular record.[4]

Whether or not our review of the question of substantive due process which may be presented in any case of a

---

3 *Brown v. McNamara, supra.* We use the dichotomy of "procedural" and "substantive" due process in this case only to help emphasize what we do and do not decide on this appeal. We realize fully that the distinction is not always a clear line and may well break down under certain circumstances.

4 Such concerns as interference with the military are not irrelevant or necessarily of slight importance. See Warren, *The Bill of Rights and the Military*, 37 N. Y. U. L. Rev. 181, 197 (1962).

person voluntarily enlisted in military service is as broad as or limited to the "basis in fact test," *Estep v. United States*, 327 U. S. 114, 122-23 (1946); *United States v. Seeger*, 380 U. S. 163, 185 (1965), or whether an indispensable prerequisite to our exercise of jurisdiction is always the complete exhaustion of military remedies, *Gusik v. Schilder*, 340 U. S. 128 (1950),[5] we need not decide in this case.

The present record contains sufficient evidence to show that the Adjutant General's denial of discharge for reasons of conscientious objection was not arbitrary, or capricious, or irrational.[6] We draw specific attention to the advisory opinion of the Director of Selective Service, to the full compliance of the Army with AR 635-20, to the requirements in DOD 1300.6 that claims will be recognized "to the extent practicable and equitable" and that claims will not be entertained if the conscientious objector's beliefs existed prior to entering the Armed Forces, to the fact that Private Brown made his claim two weeks after beginning basic training (six weeks after enlisting), to the statement of the Brigade Chaplain that "I am of the opinion that his beliefs, though sincere, are based on contacts he has had with Paci-

---

5 See, also, *Beard v. Stahr*, 370 U. S. 41 (1962). Claimed "conscientious objector" status can always be raised as a defense to prosecution for refusing to obey orders. From any judgment or sentence, comprehensive appeal is available. 10 U. S. C. §§ 817, 859-876. This includes resort to a board of review (10 U. S. C. § 866), to the Court of Military Appeals (10 U. S. C. § 867), to the Secretary of the Army (10 U. S. C. § 874), and petition for a new trial (10 U. S. C. § 873). Appellant has not pursued all these available remedies. On this record, we are unwilling to expand the principle of *Dombrowski v. Pfister*, 380 U. S. 479 (1965), in order to assure for appellant determination of any constitutional issues without exposure to court martial proceedings. See *Noyd v. McNamara*, 378 F. 2d 538, 540 (10th Cir. 1967). Counsel for appellant have referred us to the case of *United States v. Taylor*, No. CM413709 (Board of Review, U. S. Army, October 24, 1966), where conscientious objection was deemed no defense to a refusal to obey orders and thus evidence on the determination of a claim as a conscientious objector was held properly excluded. We do not have the record in this case and note that this case is not a determination by the highest Army appellate authority.

6 See *Burns v. Wilson*, 346 U. S. 137, 142-3 (1953), where the court noted in an analogous situation:

> "For the constitutional guarantee of due process is meaningful enough, and sufficiently adaptable, to protect soldiers—as well as civilians—from the crude injustices of a trial so conducted that it becomes bent on fixing guilt by dispensing with rudimentary fairness rather than finding truth through adherence to those basic guarantees which have long been recognized and honored by the military courts as well as the civil courts."

fistic Organizations and individuals rather than on Religious Convictions," and to the opinion of the Commanding Officer that Private Brown's beliefs were "mainly based on readings and influences made upon him by persons practicing pacifist policies, not on religious beliefs."[7]

Such factors constitute a sufficient basis for the Army's decision within the guidelines of DOD 1300.6. In this posture, Private Brown's petition presents no claim sufficiently unique, nor does his position show such injustice, that we are compelled to interfere in whatever internal avenues of appeal are available to him within the Army.

For these reasons, the petitioner is not now entitled to a writ of habeas corpus and we will affirm the decision of the court below.

STALEY, *Chief Judge*, Concurring.

I concur in the affirmance of the district court's denial of the writ. I also agree with the majority opinion insofar as it affirms the finding of the district court that the administrative procedure used by the Army did not deny the appellant procedural due process. However, I agree with the district court's conclusion that federal courts should refuse to accept subject matter jurisdiction to pass on the

---

7 It is noted that in his application for discharge, appellant included under "Pacifist Training": personal contact with professed pacifists, reading of literature from SANE and the World Federalists, contacts with peace groups at Yale, including "Alternative" and "Americans for Reappraisal of Far Eastern Policy," and reading the beginning of MacLuham: *Understanding Media: The Extension of Man*. Although, as stated above, we do not here decide the applicability of the "basis in fact" test to classification of enlistees after entering active service, this case does fulfil the requirements under the test suggested in *Dickinson v. United States*, 346 U. S. 389, 396 (1953), there being a showing that the Army's finding was supported by "some affirmative evidence," and the requirements suggested in *United States v. Seeger, supra*, at 179-80, since the record contains affirmative evidence that the appellant's opposition to military service was not "based on grounds that can fairly be said to be 'religious.'"

It is also noted that the Commanding Officer believed that "prior to his enlistment into military service, and since . . . [that time] Brown has been subjected to reading numerous papers and pamphlets concerning the 'Pacifist Program' currently being demonstrated in this country." As pointed out above, conscientious objector beliefs existing prior to entry into the Armed Forces are not grounds for discharge under AR 635-20.

factual adequacy of the Army's decision. 263 F.Supp. at 692-93. As stated in the opinion below, the exercise of such jurisdiction has properly been held to be unduly disruptive of the operation of the armed forces, and contrary to the doctrine of the separation of powers. Orloff v. Willoughby, 345 U.S. 83, 93-94 (1953); Harmon v. Brucker, 243 F.2d 613, 619 (C.A.D.C., 1957) rev'd other grounds, 355 U.S. 579 (1958).

MARIS, *Circuit Judge,* concurring in part and dissenting in part.

I concur with the opinion of the court in holding that the federal courts have power to review the substantive elements of the military proceedings under which Brown was denied discharge from the Army as a conscientious objector. But I cannot agree that upon such review the denial of his discharge must be upheld. For I think that the military authorities made a basic error in concluding that the fact that Brown's pacifist beliefs were based on contacts with or influences made upon him by pacifist persons and organizations was evidence that they were necessarily not religious beliefs. Quite the contrary may very well have been the case. For it can hardly be denied that the pacifist position of opposition to war stems from the Divine commands not to kill but to love one's enemies and that through the centuries most of those who have taken the pacifist position have done so on the basis of their religious beliefs. Indeed recognition of this fact is the basis of the exemption from military service and training which is granted by the Selective Service Act to conscientious objectors. As to the broad meaning of religious belief in this connection see United States v. Seeger, 1965, 380 U.S. 163.

It is true, of course, that there are pacifists who are motivated solely by political, sociological or philosophical views. But it is quite erroneous to assume, as the military

authorities did in Brown's case, that pacifist persons are necessarily not religiously motivated and that organizations supporting the pacifist position are necessarily organized and led by persons whose pacifist views stem from other than religious conviction, and to conclude from that assumption that the contacts with Brown and influences upon him by such persons and organizations did not involve religious grounds of opposition to war. On the contrary I believe it to be a fact that in this country most pacifists are religiously motivated, as the Seeger case defines such motivation, and that most organizations supporting the pacifist position are largely composed of and led by individuals so motivated. The military authorities had before them no evidence as to the actual basis of the pacifist beliefs of the persons and organizations with which Brown was in contact or as to the nature of the views which they expressed to him. Since their erroneous assumption that these must necessarily have been non-religious infects the whole record and obviously influenced their decision, I would reverse.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

Amended Opinion of the United States District Court, District of New Jersey

Civil No. 1186-66

DAVID W. BROWN, Private E-2, RA 11 797 464,

Petitioner,

v.

HON. ROBERT S. MCNAMARA, Secretary of Defense; HON. STANLEY R. RESOR, Secretary of the Army; MAJOR GENERAL JOHN M. HIGHTOWER, Commanding General, U. S. Army Training Center, Infantry, U. S. Army, Fort Dix, New Jersey,

Respondents.

Appearances:

EMERSON L. DARNELL, Esquire,
Mount Holly, and

ELEANOR HOLMES NORTON, Esquire
(Pennsylvania and District
of Columbia Bars)
for Petitioner.

DAVID M. SATZ, JR., Esquire,
United States Attorney, by

WILBUR H. MATHESIUS,
Assistant United States Attorney,
for Respondents.

Amended Opinion of the U. S. District Court

LANE, *District Judge*:

On or about May 17, 1966, David W. Brown, just prior to his twenty-first birthday, enlisted in the United States Army for a period of three years. Private Brown was assigned to Fort Dix, New Jersey, for an eight-week basic Army combat training course. After completing two weeks of the course, it is alleged that Private Brown's thoughts crystallized to the point where he was compelled to conclude that by reason of his religious training and belief, he was unable to serve as a soldier in the United States Army. Brown informed his superior officers of this and refused to proceed further with combat training.

On June 28, 1966, Private Brown submitted a Personal Action Form (DA Form 1049) requesting a discharge pursuant to Department of Defense Directive (DOD) No. 1300.6 and Army Regulation (AR) No. 635-20. The Defense Department Directive was issued by the Secretary of Defense under his general power to control the Department of Defense, 10 U.S.C. § 133. The stated purpose of the directive was to establish "uniform procedures for the utilization of conscientious objectors in the Armed Forces and consideration of requests for discharge on the grounds of conscientious objection." DOD 1300.6, pt. I. These procedures apply to "all personnel of the Army, Navy, Air Force and Marine Corps and to all Reserve components thereof." DOD 1300.6, pt. II.

Part III of the directive is headed "POLICY" and is composed of seven paragraphs lettered A. to G. The general content of this material is as follows: A. That an administrative discharge prior to completion of term of service is discretionary based on the facts of each case

and no one has a vested right to such a discharge. B. That consistent with the national policy of not inducting conscientious objectors (I-O classification) such claims will also be recognized when made by members of the Armed Forces to the extent practicable and equitable. C. That such claims will not be entertained if the conscientious objector's beliefs existed prior to his entering the armed forces. D. That final determination of the request should be made by the departmental headquarters of the individual's service after consideration of the circumstances in the particular case and the pertinent criteria. E. That great care should be used to insure that the claim is sincere so that the procedure is not abused and in making this determination the claim should be judged by the same standard as is used in judging a pre-induction claim. F. That the standards used by the Selective Service System in determining I-O or I-A-O classification of draft registrants prior to induction are considered appropriate for judging the conscientious objector claims of those who are already members of the armed forces. G. That in order to insure the maximum practicable uniformity among the services and between members of the same service, an advisory opinion of the Selective Service that an I-O classification is appropriate will normally be a requisite for discharge based on conscientious objection of persons who have served less than two years of active service.

Part IV of the directive sets forth some guidelines as to the criteria to be used in evaluating the claim and emphasizes the point that the objection must be religious. It states that affiliation with particular groups does not result in automatic classification and that lack of such affiliation

does not preclude conscientious objector status. It also recognizes that there are no absolute objective measurements which can be applied across the board.

Part V of the directive sets forth the procedure to be employed. Paragraphs C. and D. under this part contain the provisions applicable to the instant case. They provide in pertinent part that a person requesting discharge because of conscientious objection is required to furnish certain information deemed appropriate by the military department concerned and, in addition, may submit other information he deems appropriate. These materials together with other information supplied by the applicant's immediate command are then forwarded to the departmental headquarters for determination. Before the departmental headquarters makes a determination concerning the discharge of persons who have actively served for less than two years, the case is forwarded to the Director of the Selective Service System for an advisory opinion as to the applicant's proper classification under the Universal Military Training and Service Act. If a classification of I-O is recommended the person will be considered for discharge. If a classification of I-A-O is recommended, discharge will not be granted, but the individual will be considered for assignment to non-combatant duties. Persons for whom neither of the above classifications is recommended will normally be retained in military service, subject to normal duty assignments. If the individual who has been denied discharge demonstrates continued unwillingness to serve, he will be subject to disciplinary action just as any other member of the armed forces who demonstrates similar behavior. Paragraph F. provides that

determination by the military department, in accordance with the facts of the case and the guidelines, shall be final with respect to the administrative separation of its members.

Following the issuance of DOD 1300.6, Army Regulation 635-20 was promulgated by order of the Secretary of the Army pursuant to his authority under 10 U.S.C. § 3012 and 10 U.S.C. § 3811. This regulation contains most of the information embodied in DOD 1300.6 and under part 4 sets out the information required of the applicant on his DA Form 1049. In addition it provides that the individual requesting discharge will receive a counseling interview by a chaplain and psychiatric interview with a psychiatrist. The chaplain is to report on the sincerity of the individual's belief and whether it is religious. The psychiatrist's report passes on whether there is anything to indicate the need of disposition through medical channels. These reports and the information supplied by the applicant are forwarded through military channels to the Adjutant General, together with certain comments thereon by the unit commander including his recommendation and reasons therefor. It is the Adjutant General who effects coordination with the Selective Service System.

Part 5 of AR 635-20 provides that the individual requesting discharge based on conscientious objection will be retained in his unit and assigned duties providing the minimum of conflict with his professed beliefs pending a final decision in his application.

Private Brown followed the procedures outlined in DOD 1300.6 and AR 635-20. In addition to submitting the required information he also had information submitted on

his behalf by various people including the Methodist Chaplain and Assistant Methodist Chaplain at Yale University; a minister who was on the staff at the Wesley Foundation at Yale University; the pastor of the First Methodist Church, New Haven, Connecticut; and Private Brown's wife. This information, together with information supplied by various military personnel was submitted to the Adjutant General who then forwarded it to the Director of the Selective Service System. The Director's advisory opinion was that Private Brown would not be properly classified in I-O or I-A-O if he were being considered for induction. Subsequent to this evaluation the Adjutant General denied the application for discharge and found that Brown should be "retained on active duty without assignment limitations to complete his obligated period of service. . . ."

Brown was then ordered to draw combat equipment. He refused and charges were preferred against him under 10 U.S.C. § 891. On October 15, 1966, he was tried and convicted by Special Court-Martial and sentenced to three months confinement at hard labor. This sentence was suspended on the same day by the reviewing authority. On October 17, 1966, Brown was again ordered to draw combat equipment. He again refused and charges were preferred under 10 U.S.C. § 890. A pre-trial investigation was conducted pursuant to 10 U.S.C. § 832 and it was decided that instead of holding a second court-martial, the suspension of the first sentence should be vacated and Private Brown was ordered into confinement on November 16, 1966.

On November 29, 1966, a petition for a writ of habeas corpus was filed with this court under 28 U.S.C. § 2241,

naming as respondents the Honorable Robert S. McNamara, Secretary of Defense; Honorable Stanley R. Resor, Secretary of the Army; and Major General John M. Hightower, Commanding General, U. S. Army Training Center, Infantry, U. S. Army, Fort Dix, New Jersey. It is petitioner's contention that he is being held in violation of his rights in that (a) denial of his application for discharge was in violation of 50 U.S.C. App. § 456(j), DOD 1300.6, and AR 635-20; (b) denial of his application for discharge was in violation of the due process clause of the fifth amendment because it was arbitrary and without any basis in fact; (c) denial of his application for discharge was in violation of the due process clause of the fifth amendment because no hearing was held and no reason for the denial of discharge was given; (d) denial of his application for discharge was a violation of equal protection of laws because he was not given the hearing rights accorded those seeking conscientious objector status prior to entering the armed forces and this differential treatment is without rational basis. We signed an Order to Show Cause on November 29, 1966.

Certain individuals have firm and sincere religious beliefs which make them conscientiously opposed to participation in the armed forces. Although not constitutionally compelled, recognition has been given to these beliefs in the form of an exemption from military training and service. See 50 U.S.C. App. § 456(j). This statutory exemption is a matter of legislative grace and has long been recognized as such. See, e.g., *Fleming* v. *United States,* 344 F. 2d 912, 915 (10th Cir. 1965); *Clark* v. *United States,* 236 F. 2d 13, 23 (9th Cir.), *cert. denied,* 352 U.S. 882 (1956); *United*

States v. *Kenstler,* 250 F. Supp. 833, 834 (W.D. Pa. 1966).

If an individual is denied an exempt classification by his local board the statute gives him a right to appeal the denial to a board of appeals. After this appeal the registrant has no further administrative appeal and cannot directly attack the classification in court. If he still feels that his classification is incorrect his recourse is to refuse to submit to induction and then assert the allegedly improper classification as a defense in a criminal prosecution, see *Dickinson* v. *United States,* 346 U.S. 389 (1953); *Estep* v. *United States,* 327 U.S. 114 (1946); or to bring a habeas corpus action after he has been called for service and inducted. *Cf. Orloff* v. *Willoughby,* 345 U.S. 83 (1953); *Cox* v. *Wedemeyer,* 192 F. 2d 920 (9th Cir. 1951). In either case the scope of judicial review is limited to a determination of whether there is any basis in fact for the classification. See *Estep* v. *United States,* 327 U.S. 114 (1946). The procedures provided by 50 U.S.C. App. § 456(j) apply only to the classification process for those who have not yet been inducted into the armed forces. Thus, petitioner, who voluntarily enlisted in the Army, does not come within its provisions.

However, in furtherance of the national policy given expression in 50 U.S.C. App. § 456(j), the Department of Defense has seen fit to provide a procedure for evaluating the claims of members of the armed forces who, after induction, have developed religious beliefs which make them conscientiously opposed to participation in the armed services or combatant aspects thereof. The procedure is set forth in DOD 1300.6 which is an executive directive rather than a congressional mandate. Like the statute relating to

pre-induction classification, the directive in question here is not the result of constitutional compulsion.

With this as a background, we will deal with the contention that the lack of a hearing in the post-induction procedure denied petitioner equal protection because pre-induction applicants are given this right. Our answer to this is that the necessity of the armed services to order and control those already within its operation is a sufficiently rational basis for such a distinction. As the Court recognized in *Burns* v. *Wilson,* 346 U.S. 137, 139-40 (1953), the rights of members of the armed forces are not always as great as those of civilians because "the rights of men in the armed forces must perforce be conditioned to meet certain overriding demands of discipline and duty. . . ." In fact, the basis for affording differential treatment is so compelling that we feel that the Secretary of Defense could, without violating any constitutional rights, totally deny a procedure for dealing with the claims of "conscientious objectors" who have been properly inducted into the armed forces. Thus, we are unable to conclude that there has been a violation here merely because no hearing is required. See also *In re Kanewske,* 260 F. Supp. 521, 523 (N.D. Cal. 1966).

However, even though the Constitution does not require a procedure whereby post-induction conscientious objectors can have their claims passed upon, once such a procedure is established and put into operation it must be administered in a manner which provides equal protection of laws[1] to all those to whom it is open. *Cf. Griffin* v. *Illinois,*

[1] See *Bolling* v. *Sharpe,* 347 U. S. 497 (1954) which appears to incorporate the equal protection clause into the fifth amendment.

351 U.S. 12, 18 (1956). Our review of the procedural aspects of the directive and implementing regulation compels us to conclude that it is designed to assure the maximum of uniformity of treatment of those covered. Determinations are made at departmental headquarters after the applicant is given the opportunity to submit whatever information he desires. The determination is made only after the Director of Selective Service evaluates the materials and gives an advisory opinion.[2] The procedure thus provides a centralized system removed from local prejudices and interpretations. We feel that the insulation provided by this procedure assures a high degree of equal protection. We thus conclude that the administrative scheme set up by the Department of Defense and the Army does not of itself result in any constitutional violation.

In the instant case the prescribed procedures were followed and it was determined that petitioner was not entitled to either I-O or I-A-O classification. We are now asked to review this determination, it being alleged that it was arbitrary and without basis in fact.

We are dealing here with matters within the control of the Secretary of the Army. Article I, § 8, cl. 14 of our Constitution provides that the President shall be the Commander in Chief of the Army and Navy of the United States and that Congress shall have power to make rules for the government and regulations of the land and naval forces.

---

[2] It should be noted that the implementation of this advisory opinion technique coupled with employing the standards used by the Selective Service in making pre-induction classifications also affords substantial uniformity between the determination relating to the pre- and post-induction applicant for conscientious objector status.

To a large extent this power has been delegated to the executive branch. Section 3012 of 10 U.S.C. gives the Secretary of the Army broad authority and responsibility with respect to the conduct of the affairs of the Army and in particular his power to discharge enlisted members of the Army before their term of services expires is expressly granted in section 3811(b) of 10 U.S.C.

The administrative scheme with which we are dealing is designed to create a minimum of disruption of the internal affairs of the Army,—the decision of the departmental headquarters is final. The matter is thus expeditiously handled and during the pendency of the proceedings the applicant is reassigned to duties providing a minimum of conflict with his professed beliefs. If discharge or assignment to non-combatant service is denied, he is then returned to normal service and treated like other members of the military.

It is our belief that this is where the matter should end. It should not be prolonged by bringing the controversy into the courts of law. *Cf. Switchmen's Union of North America* v. *National Mediation Board*, 320 U.S. 297, 305 (1943). In arriving at the decision of whether to accept jurisdiction, we feel that the effect on the military of judicial involvement in the administrative scheme is a very relevant consideration. Acceptance by us of jurisdiction to review the factual basis of the administrative determination could seriously disrupt the internal operations of the military. By the time the matter was reviewed by us and disposed of on appeal an additional year would ensue before "final" determination. However, without review by the judiciary the military can render a "final" decision within a relatively short period of time.

Under the present scheme during the pendency of the administrative determination the military tries to assign the applicant to a non-combatant job. If we were to accept jurisdiction, would the military be expected to set this man aside for the additional time which it takes for his case to move through the courts?[3] The question causes us great concern. The reason that we are so concerned with the status of the applicant while his case is pending relates to the very nature of the claim of conscientious objection. It appears to us that it will be very difficult for the military to effectively integrate these applicants into any form of combatant training or service while their cases are still being acted upon. It is likely that these applicants will face court martials rather than comply with orders, so they will be able to reinforce the evidence as to the sincerity of their beliefs and their entitlement to discharge or reassignment.[4]

We do not wish to foster a situation which results in having part of what is supposed to be our active force immobile and entangled in litigation. How can the military efficiently devote its facilities and personnel to training a military unit if it cannot rely on those who have been properly inducted and are subject to its control? It is one thing for the courts to be in the middle of the thicket on the issue of pre-induction classification and on the issue of whether the proper form of discharge has been granted.

---

[3] Admittedly, they are able to absorb those who have been classified I-A-O and assigned to non-combatant service, but in those cases the man has already proved that he is entitled to the classification.

[4] While they may continue even after their cases are final, we do not feel that it will occur with as much frequency.

Such litigation at the beginning and end of the military term of service is not nearly as disruptive to the function of the armed services as that which threatens the very utilization of the manpower which has been assembled for active service.

In those cases in which the courts have accepted jurisdiction to review matters relating to persons already in the military the question involved something more than whether the factual determination was valid. In *Orloff* v. *Willoughby*, 345 U.S. 83 (1953), the question was whether induction was valid, and in *Harmon* v. *Brucker*, 355 U.S. 579 (1958), the question was whether the military was acting within its statutory authority. In our case the petitioner has been properly inducted and it is not alleged that the procedure used was in excess of statutory power. We are asked here merely to determine if there is any basis in fact for the determination which was made by the adjutant general. Even this narrow scope of review could result in the disruption of military operations discussed above. It is our feeling that the benefits to be derived from the added safeguard of having us review the administrative determination are outweighed by the burdens on the military which would result. Consequently, we refuse to accept jurisdiction to pass on the factual adequacy of administrative decision.

Although jurisdiction to review administrative findings is not always spoken of in terms of the burden-benefit analysis, the statement by the Supreme Court in *Orloff* v. *Willoughby, supra* at 93-94 is just another way of enunciating it. There the Court stated:

> "We know that from top to bottom of the Army the complaint is often made, and sometimes with justification, that there is discrimination, favoritism or other objectionable handling of men. But judges are not given the task of running the Army. The responsibility for setting up channels through which such grievances can be considered and fairly settled rests upon the Congress and upon the President of the United States and his subordinates. The military constitutes a specialized community governed by a separate discipline from that of the civilian. Orderly government requires that the judiciary be as scrupulous not to interfere with legitimate Army matters as the Army must be scrupulous not to intervene in judicial matters."

Judge Prettyman in *Harmon* v. *Brucker*, 243 F. 2d 613, 619 (D.C. Cir. 1957), *rev'd on other grounds*, 355 U.S. 579 (1958), chose to express this idea in terms of the separation of powers:

> "Reason, flowing from the doctrine of the separation of powers, dictates that in many fields the administrative discretion of the executive branch and the legislative discretion of the legislative branch be not subject to interference or review by the courts. In no field is this doctrine more pertinent and important than in the operation of the armed forces. Provisions for the establishment and operation of such forces necessary to the security of this country are wholly legislative matters, and the administration of those forces is the very essence of executive action. The Constitution so provides. Only in the most extreme cases can the judiciary interfere in this area."

However our denial of jurisdiction is stated, the result is the same,—the determination of the adjutant general is final and is binding on the petitioner. Consequently, petitioner's retention in the Army and his detention pursuant to the Special Court-Martial are lawful and therefore he is not entitled to relief by way of habeas corpus.[5]

[5] We do not pass judgment on the reason employed in *Petition of Green,* 156 F. Supp. 174 (S. D. Cal. 1957), and the cases cited therein which would also support the result we reach.

50 U. S. C. §456(j)

SECTION 6(j), UNIVERSAL MILITARY TRAINING AND SERVICE ACT.

Nothing contained in this title [sections 451-454 and 455-471 of this Appendix] shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title [said sections], be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4 (b) [section 454 (b) of this Appendix] such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title [section 462 of this Appendix], to have knowingly failed or neglected to perform a duty required of him under this title [sections 451-454 and 455-

471 of this Appendix]. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title [said sections], he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4 (b) [section 454 (b) of this Appendix] such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title [sections 451-454 and 455-471 of this Appendix].

Department of Defense Directive 1300.6

August 21, 1962
NUMBER 1300.6
ASD(M)

DEPARTMENT OF DEFENSE DIRECTIVE

(Italicizing in text added)

SUBJECT Utilization of Conscientious Objectors and Procedures for Processing Requests for Discharge Based on Conscientious Objection

I. PURPOSE

This Directive establishes uniform procedures for the utilization of conscientious objectors in the Armed Forces and consideration of requests for discharge on the grounds of conscientious objection.

II. APPLICABILITY

The policies and procedures set forth herein apply to all personnel of the Army, Navy, Air Force and Marine Corps and to all Reserve components thereof.

III. POLICY

A. No vested right exists for any individual to be discharged from military service at his own request before the expiration of his term of service, whether he is serving voluntarily or involuntarily. Administrative discharge prior to the completion of his term of service is discretionary with the

service concerned, based on judgment of the facts and circumstances in the case.

B. The fact of conscientious objection does not exempt men from the draft; however, the Congress has deemed it more essential to respect a man's religious beliefs than to force him to serve in the Armed Forces, and accordingly has recognized bona fide religious objection to participation in war, in any form, to the extent that such an objector (1-O classification) is not inducted into the Armed Forces but is required to serve his country for the same period of time in civilian work contributing to the maintenance of national health, safety, or interest under a prescribed Alternate Service Plan (Conscientious Objectors' Work Program). Consistent with this national policy, bona fide conscientious objection by persons who are members of the Armed Forces will be recognized to the extent practicable and equitable.

C. Federal courts have held that a claim to exemption from military service under the UMT&S Act must be interposed prior to notice of induction and failure to make timely claim for exemption constitutes waiver of the right to claim. *Therefore, request for discharge after entering military service, based solely on conscientious objection which existed but was not claimed prior to induction or enlistment, cannot be entertained. Similarly, requests for discharge based solely on conscientious objection claimed and denied by Selec-*

tive Service prior to induction cannot be entertained.

D. It is the policy of the Department of Defense that requests for discharge from the military service on the grounds of conscientious objection will be handled on an individual basis, with final determination made at the departmental headquarters of the individual's service in accordance with the facts and circumstances in the particular case and the criteria of this Directive. The type of discharge, if separation is deemed warranted, will be determined by the individual's military record, the standards set forth in reference (a), and the procedural guidelines herein.

E. In evaluating requests for discharge based on conscientious objection, great care must be exercised to insure the sincerity of the claim. It is essential that discharge procedures of the services not invite or permit abuse by unscrupulous persons who seek to avoid all obligations on the grounds of religious belief. Claims of conscientious objection by all persons, whether existing before or after entering military service should be judged by the same standards.

F. The standards used by the Selective Service System in determining 1-O or 1-A-O classification of draft registrants prior to induction are considered appropriate for application to cases of servicemen who claim conscientious objection after entering

military service. 1-A-O classification permits induction into the military service and the inductee is required to perform duties as outlined in Section V. A. of this Directive. I-O classification does not permit induction into military service but does permit induction into the Alternate Service Plan (Conscientious Objectors' Work Program). In either of the classifications the registrant is required to fulfill his obligations under the UMT&S Act.

G. In order to insure the maximum practicable uniformity among the services and between members of the same service, *advisory opinion by the Selective Service that a classification of 1-O is appropriate will normally be a requisite for discharge or release of members with less than two years active service* based on conscientious objection.

IV. CRITERIA

A. The criteria for determining conscientious objection (other than the statutory requirement that the objection be religious, as opposed to personal or philosophical) are not absolute objective measurements which can be applied across the board, but are the result of extensive experience and practices which have been upheld in the Courts in connection with legal obligations for service. *Among the factors considered are such items as*

#First amendment (Ch. 1, 8/30/62)

membership in a peace church, training in home and church, the general demeanor and pattern of conduct of the individual, his employment in defense-connected activities, his participation in religious activities, and his credibility and the credibility of persons supporting his claim. In the case of servicemen not liable for induction after discharge because of having served 180 days or more, the individual's willingness to engage voluntarily in post-military work of the nature encompassed by the Alternate Service Plan of Selective Service may also be pertinent.

B. *While church membership and church tenets are relevant in determining conscientious objection, they are not compelling.* The courts have held that mere membership in a religious group teaching conscientious objection is not an automatic basis for classification as a conscientious objector nor does membership in a group which does not require conscientious objection constitute an automatic basis for denying such classification. *The law does not require affiliation with any particular group in order that an individual may be classified as a conscientious objector.*

C. Evaluation of the sincerity of a claim of conscientious objection requires objective consideration of professed belief not generally shared by persons in the military service. For that reason, particular care must be exercised not to deny

bona fide convictions solely on the basis that the professed belief is incompatible with one's own.

V. PROCEDURE

A. 1. Individuals inducted into the Service who have previously been classified as 1-A-O by local induction boards should be assigned to noncombatant service, which in accordance with the President's Executive Order No. 10028, dated January 13, 1949, is defined as:

(a) service in any unit of the armed forces which is unarmed at all times;

(b) service in the medical department of any of the armed forces, wherever performed; or

(c) any other assignment the primary function of which does not require the use of arms in combat provided that such other assignment is acceptable to the individual concerned and does not require him to bear arms or to be trained in their use.

"The term 'noncombatant training' shall mean any training which is not concerned with the study, use, or handling of arms or weapons."

2. Such persons, upon induction into the Service, shall be transferred to a training center, or station, for recruit training and shall be sub-

#First amendment (Ch. 1, 8/30/62)

ject to all regular training, except the portions thereof specifically excepted by Executive Order No. 10028 quoted in A.1, above. Thereafter, upon completion of recruit training, they shall be transferred to Hospital Corps, or Medical Department, for further training, provided they meet the requirements therefor. Such men, because of assignment to medical units will not be allowed to avoid the important or hazardous duties which are the responsibility of all members of the medical organization. Any man who does not meet the requirements for this training, or who fails to complete the course, will be retained in the service and employed in noncombatant duties.

B. Personnel who claim to be conscientious objectors and state that they were so classified by their local board but their records do not so indicate:

1. The Commanding Officer shall obtain a statement from the individual concerned and refer the case to the departmental headquarters of the individual's service for investigation and decision. The departmental headquarters will investigate the matter through Selective Service.

2. If it is determined that the man should have been classified as 1-A-O, but inadvertently was not so classified, the records will be corrected;

and the Commanding Officer will be directed to correct his records accordingly. The man then will be processed as indicated in V. A. above.

3. If it is determined that no change in classification is warranted, the individual will be notified to this effect.

4. *Upon first referring of the case, pending its decision, the individual should be retained at his command and employed in noncombatant duties.*

C. 1. Individuals requesting discharge for conscientious objection will submit information as required in Inclosure 1 and such other documentation of their cases as is deemed appropriate by the military department concerned. In order to preserve the maximum practicable uniformity of treatment for like cases, requests and supporting papers will be forwarded, together with any other pertinent information known to the immediate command, to departmental headquarters for individual determination of action on the basis of the facts and the special circumstances of each case.

2. Immediately upon receipt of a request for discharge on grounds of conscientious objection, the member will be fully advised and counselled concerning the provisions of Section

3103, Title 38, United States Code. That section provides, in pertinent part, that the discharge of any person on the ground that he was a conscientious objector who refused to perform military duty or refused to wear the uniform or otherwise to comply with lawful orders of competent military authority, shall bar all rights (except government insurance) of such person under laws administered by the Veterans Administration based upon the period of service from which discharged or dismissed. The only exception is in cases in which it is established, to the satisfaction of the Administrator, that the member was insane. After counselling, the member will be required to sign and date the statement appended hereto as Inclosure 2.

3. Before making a determination concerning a possible discharge for conscientious objection in cases falling within the terms of Section III.G., *the military department concerned will forward each case to the Director, Selective System, Washington 25, D. C., for an advisory opinion* as to the individual's proper classification under the UMT&S Act. At the discretion of the military department concerned, advisory opinions may also be sought on members with two or more years service.

D. 1. Individuals for whom 1-O classification is recommended by Selective Service will be con-

sidered for discharge by reason of their conscientious objection to military service.

2. Individuals for whom 1-A-O classification is recommended normally will not be considered for discharge for conscientious objection reasons, but will be reassigned to noncombatant duties as outlined in Section V. A. of this Directive. Individuals so reassigned will be required to sign and date the statement appended hereto as Inclosure 3.

3. Individuals for whom neither 1-O nor 1-A-O classification is recommended by Selective Service will normally be retained in military service, subject to normal duty assignments.

4. If, in the judgment of the commander concerned, any individual reassigned to noncombatant duties or returned to his normal duty assignment demonstrates or has previously demonstrated his inability or unwillingness to cooperate in a manner which constitutes the basis for disciplinary action, action will be taken as in the case of any other member of the military service who demonstrates similar behavior.

E. 1. Individuals for whom 1-O classification is recommended by Selective Service will normally be discharged "For the Convenience of the Government." Conscientious objection will be

cited as the supporting reason in order to avoid possible future confusion. Pending separation, the individual will be assigned duties providing the minimum conflict with his professed beliefs and will be required to maintain the same standards of performance and behavior as other personnel assigned to his unit.

2. *Personnel* with less than 180 days service (volunteers or inductees) who are determined to be bona fide conscientious objectors (1-O classification) and *whose request for separation is made early enough so that discharge occurs prior to completion of 180 days active duty will be separated for the convenience of the government by reason of conscientious objection to permit service in the Conscientious Objectors' Work Program. In such cases, the Selective Service System will be promptly notified of the date of discharge from the military service, the fact that the individual has not completed 180 days active duty, and will be requested to "induct" the individuals for the alternate service provided by the UMT&S Act.*

F. Determination by the military department, in accordance with the facts of the case and the guidelines furnished herein, shall be final with respect to the administrative separation of its members.

VI. IMPLEMENTATION AND EFFECTIVE DATE

A. All service regulations and policies in conflict with this Directive shall be cancelled immediately. Three copies of regulations implementing the policies contained herein will be furnished to the Assistant Secretary of Defense (Manpower) within 90 days from the date of publication of this Directive.

B. This Directive is effective immediately.

/s/ Roswell Gilpatric
Deputy Secretary of Defense
Aug 21, 62
1300.6 (Incl 1)

Required Information

Each person seeking release from active service from the Armed Forces, as a conscientious objector, will provide the information indicated below as the minimum required for consideration of his request. This in no way bars the Military Departments from requiring additional information as they desire. The individual may submit such other information as desired.

A. General Information

1. Full name.
2. Military Serial Number.
3. Selective Service Number.
4. Service Address.

5. Permanent Home Address.

6. Give the name and address of each school and college which you have attended, together with the dates of your attendance, and state in each instance the type of school (public, church, military, commercial, etc.).

7. Give a chronological list of all occupations, positions, jobs, or type of work, other than as a student in school or college, in which you have at any time been engaged, whether for monetary compensation or not, giving the type of work, name of employer, address of employer and the from/to date for each position or job held.

8. Give all addresses and dates of residence where you have formerly lived.

9. Give the name and address of your parents and indicate whether they are living or deceased.

10. State the religious denomination or sect of your father and mother.

11. Did you apply to the Selective Service System (Local Board) for classification as a conscientious objector prior to entry into the Armed Forces? To which local board? What decision was made by the Board, if known?

12. If you have served less than 180 days in the military service and are discharged as a conscientious objector, are you willing to perform work under the Selective Service Conscientious Objectors' Work Program? Yes—— No ——. Will you consent to the issuance of an order for such work by your Local Selective Service Board? Yes —— No ——.

Department of Defense Directive 1300.6

B. Religious Training and Belief.

1. Do you believe in a Supreme Being?

2. Describe the nature of your belief which is the basis of your claim, and state whether or not your belief in a Supreme Being involves duties which to you are superior to those arising from any human relation.

3. Explain how, when, and from whom or from what source you received the training and acquired the belief which is the basis of your claim.

4. Give the name and present address of the individual upon whom you rely most for religious guidance.

5. Under what circumstances, if any, do you believe in the use of force?

6. Describe the actions and behavior in your life which in your opinion most conspicuously demonstrates the consistency and depth of your religious convictions.

7. Have you ever given public expression, written or oral, to the views herein expressed as the basis for your claim? If so, specify when and where.

C. Participation in Organizations.

1. Have you ever been a member of any military organization or establishment before entering the Armed Forces for this tour? If so, state the name and address of same and give reasons why you became a member.

2. Are you a member of a religious sect or organization? If your reply is "yes":—

a. State the name of the sect, and the name and location of its governing body or head if known to you.

b. When, where, and how did you become a member of said sect or organization?

c. State the name and location of the church, congregation, or meeting where you customarily attend.

d. Give the name, title, and present address of the pastor or leader of such church, congregation or meeting.

e. Describe carefully the creed or official statements of said religious sect or organization in relation to participation in war.

3. Describe your relationships with and activities in all organizations with which you are or have been affiliated, other than military, political, or labor organizations.

D. References.

1. Give the name, full address, occupation or position, and relationship to you, concerning persons who could supply information as to the sincerity of your professed convictions against participation in war.

[One of the following (Incl 2) or (Incl 3) to be signed by applicant. Ed.]

Aug 21, 62
1300.6 (Incl 2)

Department of Defense Directive 1300.6

STATEMENT

I have been counselled concerning possible non-entitlement to benefits administered by the Veterans Administration due to discharge from the military service as a conscientious objector. I understand that a discharge as a conscientious objector, who refuses to perform satisfactory military duty or otherwise to comply with lawful orders of competent military authority, may bar all rights, based upon the period of service from which discharged, under any laws administered by the Veterans Administration except my legal entitlement (if any) to any war risk, government (converted) or National Service Life Insurance.

Aug 21, 62
1300.6 (Incl 3)

STATEMENT

I have been counselled concerning designation as a conscientious objector. Based on my religious training and belief, I consider myself to be a conscientious objector and am conscientiously opposed to participation in combatant training and service. I request assignment to noncombatant duties for the remainder of my term of service. I fully understand that on expiration of my current term of service I am not eligible for voluntary enlistment, reenlistment, or active service in the Armed Forces.

ARMY REGULATION
No. 635-20

HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, D.C., *5 January 1966*

PERSONNEL SEPARATIONS

CONSCIENTIOUS OBJECTION

	Paragraph
Purpose	1
Scope	2
Policy	3
Procedure	4
Assignment	5
Separation of personnel having less than 180 days service	6
Authority	7
Form of separation certificate	8

1. Purpose. This regulation sets forth the policy, criteria, and procedures for disposition of military personnel who, by reason of religious training and belief, claim conscientious objection to participation in war in any form.

2. Scope. This regulation applies equally to commissioned officers, warrant officers, and enlisted personnel in the active military service.

3. Policy. *a.* Consideration will be given to requests for separation based on conscientious objection to participation in war, in any form, when such objection develops subsequent to entry into the active military service.

b. Requests for discharge will not be entertained when based solely on conscientious objection which existed, but which was not claimed prior to induction, enlistment, or entry on active duty or active duty for training. Similarly, requests for discharge will not be entertained when based solely on conscientious objection claimed and denied by the Selective Service prior to induction.

c. All requests for discharge based on conscientious objection will be considered on an individual basis in accordance with the facts and special circumstances in a particular case.

d. Final determination will be made at Headquarters, Department of the Army, on all requests for discharge based on conscientious objection.

4. Procedure. *a.* Military personnel will submit applications for discharge by reason of conscientious objection on DA Form 1049 (Personnel Action) to their immediate commanding officers. The individual requesting discharge will include in his application or as an inclosure thereto the information indicated below as the minimum required for consideration of his request. The individual may submit such other information as desired.

(1) General information.
- (*a*) Full name.
- (*b*) Military service number.
- (*c*) Selective service number.
- (*d*) Service address.
- (*e*) Permanent home address.
- (*f*) Give the name and address of each school and college which you have attended, together with the dates of your attendance, and state in each instance the type of school (public, church, military, commercial, etc.).
- (*g*) Give a chronological list of all occupations, positions, jobs, or type of work other than as a student in school or college, in which you have at any time been engaged, whether for monetary compensation or not, giving the type of work, name of employer, address of employer, and the from/to date for each position or job held.
- (*h*) Give all addresses and dates of residence where you have formerly lived.
- (*i*) Give the name and address of your parents and indicate whether they are living or deceased.
- (*j*) State the religious denomination of sect of your father and mother.
- (*k*) Did you apply to the Selective Service System (Local Board) for classification as a conscientious objector prior

*This regulation supersedes AR 635-20, 9 November 1962, and rescinds DA message 742770, 4 December 1965.

to entry into the Armed Forces? To which local board? What decision was made by the Board, if known?

(*l*) If you have served less than 180 days in the military service and are discharged as a conscientious objector, are you willing to perform work under the Selective Service Conscientious Objectors' Work Program? Yes ____ No ____. Will you consent to the issuance of an order for such work by your Local Selective Service Board? Yes ____ No ____.

(2) Religious training and belief.

(*a*) Do you believe in a Supreme Being?

(*b*) Describe the nature of your belief that is the basis of your claim, and state whether or not your belief in a Supreme Being involves duties that to you are superior to those arising from any human relation.

(*c*) Explain how, when, and from whom or from what source you received the training and acquired the belief which is the basis of your claim.

(*d*) Give the name and present address of the individual upon whom you rely most for religious guidance.

(*e*) Under what circumstances, if any, do you believe in the use of force?

(*f*) Describe the actions and behavior in your life which in your opinion most conspicuously demonstrate the consistency and depth of your religious convictions.

(*g*) Have you ever given public expression, written or oral, to the views herein expressed as the basis for your claim? If so, specify when and where.

(3) Participation in organizations.

(*a*) Have you ever been a member of any military organization or establishment before entering the Armed Forces for this tour? If so, state the name and address of same and give reasons why you became a member.

(*b*) Are you a member of a religious sect or organization? If your reply is "yes"—

1. State the name of the sect, and the name and location of its governing body or head if known to you.

2. When, where, and how did you become a member of said sect or organization.

3. State the name and location of the church, congregation, or meeting where you customarily attend.

4. Give the name, title, and present address of the pastor or leader of such church, congregation, or meeting.

5. Describe carefully the creed or official statements of said religious sect or organization in relation to participation in war.

(*c*) Describe your relationships with and activities in all organizations with which you are or have been affiliated, other than military, political, or labor organizations.

(4) References. Give the name, full address, occupation or position, and relationship to you, concerning persons who could supply information as to the sincerity of your professed convictions against participation in war.

b. Immediately upon receipt of a request for discharge on the grounds of conscientious objection, the individual's commanding officer will fully advise and counsel him concerning the provisions of Section 3103, Title 38, United States Code. That section provides, in pertinent part, that the discharge of a person on the ground that he was a conscientious objector who refused to perform military duty or refused to wear the uniform or otherwise to comply with lawful orders of competent military authority, will bar all rights (except Government insurance) of such person under laws administered by the Veterans Administration based upon the period of service from which discharged or dismissed. The only exception is in the cases in which it is established, to the satisfaction of the Administrator, that the member was insane. After counseling, the member will be required to sign and date the following statement:

I have been counseled concerning possible non-entitlement to benefits administered by the Veterans Administration due to discharge from the military service as a conscientious objector. I understand that a discharge as a conscientious objector who refuses to perform satisfac-

tory military duty or otherwise to comply with lawful orders of competent military authority may bar all rights based upon the period of service from which discharged, under any laws administered by the Veterans Administration except my legal entitlement (if any) to any war risk, Government (converted) or National Service Life Insurance.

c. An individual requesting discharge will receive a counseling interview by a chaplain and a psychiatric interview by a psychiatrist (or medical officer if a psychiatrist is not available). The chaplain will submit a report of the interview to include the sincerity of the individual in his belief and an opinion as to whether the individual's objection to military duty is based on his religious beliefs. The psychiatrist will submit a report of psychiatric evaluation indicating the presence or absence of any psychiatric disorder which would warrant treatment or disposition through medical channels.

d. The application for discharge, together with the inclosure(s), and reports of interviews, will be forwarded through military channels to The Adjutant General, ATTN: AGPO, Department of the Army, Washington, D.C., 20315.

(1) The comment by unit commander on DA Form 1049 will include the following information:

(*a*) Whether approval or disapproval is recommended. The reason(s) therefor will be included.

(*b*) Duty and primary MOS (enlisted personnel only).

(*c*) Whether medical board or physical evaluation board proceedings are pending or appropriate.

(*d*) Whether under investigation, under charges, awaiting result of trial, absent without leave, or whether any flagging action has been taken in accordance with AR 600–31.

(2) Subsequent forwarding comments on DA Form 1049 will include recommendation for approval or disapproval and any other remarks that may be pertinent.

[AGPO]

e. The Adjutant General, Department of the Army, will coordinate with the Selective Service System.

5. Assignment. An individual requesting discharge based on conscientious objection will be retained in his unit and assigned duties providing the minimum conflict with his professed beliefs pending a final decision on his application.

6. Discharge of personnel having less than 180 days service. Personnel who have less than 180 days service when discharged will be discharged by reason of conscientious objection to permit service in the Conscientious Objectors' Work Program. National Headquarters, Selective Service System, 451 Indiana Avenue NW., Washington, D.C., 20435, will be notified promptly of date of discharge from military service; advised that the individual has not completed 180 days active duty, and requested to induct the individual into the Selective Service Conscientious Objectors' Work Program.

7. Authority. *a. Commissioned officers and warrant officers.* Authority AR 635–20 and SPN 558 for separation will be included in orders announcing discharge of individuals.

b. Enlisted personnel. Authority AR 635–20 and SPN 318 for discharge will be included in directives or orders directing individuals to report to the appropriate transfer activity or unit personnel section designated to accomplish transfer processing for discharge.

8. Form of separation certificates. *a. Discharge.* An Honorable Discharge Certificate (DD Form 256A) or a General Discharge Certificate (DD Form 257A) will be furnished. Commissioned officers and warrant officers will be furnished a discharge certificate in accordance with AR 635–5 or as directed by Headquarters, Department of the Army. Enlisted personnel will be furnished a discharge certificate in accordance with AR 635–200.

b. Report of separation. Armed Forces of the United States Report of Transfer or Discharge (DD Form 214) will be furnished each individual discharged from service under this regulation.

By Order of the Secretary of the Army:

HAROLD K. JOHNSON,
General, United States Army,
Chief of Staff.

Official:
J. C. LAMBERT,
Major General, United States Army,
The Adjutant General.

Distribution:
To be distributed in accordance with DA Form 12–9 requirements for Military Personnel Procedures, Officer and Enlisted:
Active Army: A. *NG:* D. *USAR:* None.

TAGO 1025A
U.S. GOVERNMENT PRINTING OFFICE: 1966

New York Times Article

The New York Times
June 17, 1967, p. 13, col. 7

PENTAGON SCORED OVER OBJECTORS

3 Groups Charge Services Are Denying Discharges

Three organizations active on behalf of conscientious objectors charged yesterday that the armed services, in defiance of Defense Department regulations, were denying discharge or reassignment to all conscientious objectors in uniform.

The organizations are the American Civil Liberties Union, the Central Committee for Conscientious Objectors and the National Council of Churches. They held a news conference at the liberties union's headquarters, 156 Fifth Avenue, to protest the situation.

Arlo Tatum, director of the central committee, a counseling agency set up by peace and pacifist groups, said that in 1964 the services granted 80 per cent of applications by men in uniform for discharge or reassignment on the ground of conscientious objection, but in 1965 granted 4 per cent.

"Since May, 1966," he said, "not a single application, as far as we can ascertain, has been granted."

Both he and John deJ. Pemberton Jr., executive director of the liberties union, said that in the last 18 months there were 750 pending cases of applicants for conscientious objector discharges and not one was granted.

"We do not maintain that all these applications are valid cases, but we do insist that it is absolutely impossible that none is," Mr. Pemberton said.

New York Times Article

Court Ruling Recalled

The Rev. Dean M. Kelly, government relations director of the National Council of Churches, said his 250-member general board felt that if a man's conscience was awakened by experience and caused him to develop conscientious objection to war, his previous willingness to undertake military service should not be prejudicial to him.

Mr. Pemberton recalled the Supreme Court had ruled that a conscientious objector did not need to be affiliated with one of the traditional pacifist churches or hold an orthodox belief in God to avail himself of the legal right to respect for his stand. Since then, the Defense Department has issued Directive 1300.6, which permits discharge or reassignment of members of the armed forces who develop conscientious objection to war, he said.

Mr. Tatum said the services were acting "in callous disregard of the directive, the law and the moral values on which our society was founded." Mr. Pemberton said such a position was "demeaning to the services."

Mr. Tatum said that the burden of proof that an objection was valid and not a subterfuge was on the applicant. The applicant is usually examined by his chaplain, his psychiatrist and his commanding officer. In a number of cases, Mr. Tatum said, all three have recommended discharge but it has been denied.

Statement by Pentagon

Special to The New York Times

WASHINGTON, June 16—Pentagon officials would not comment directly today on the three groups' charges, which they had not seen.

New York Times Article

A spokesman for the Department of Defense said he had no statistics yet on reclassification of conscientious objectors in 1966. He said he was certain, however, that some had been approved.

For 1964 the Army reported 62 applications from men who claimed conscientious objector status after entering the armed forces. For 30 of these the change of status and reassignment were approved. In 1965 there were 74 applicants and 23 approvals. For the Air Force the 1964 figures were 17 applications and 12 approvals, while for 1965 there were 18 applications and 12 approvals. No figures were available for the Navy.